



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Date:

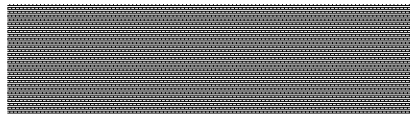
APR 28 2000

IN RE: Petitioner:
Beneficiary



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER:



Identifying
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was initially denied by the Director, Vermont Service Center. In a Service motion to reopen, the director again denied the petition which is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a major supplier and marketer of natural gas products in the countries of the former Soviet Union. It seeks classification of the beneficiary as a trainee for a period of two years. The director determined that the petitioner's primary purpose for bringing the beneficiary to the United States is to attend baccalaureate level courses at a college or university. The director also determined that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, counsel states that there will be no productive employment required of the beneficiary. Counsel also states that the overall education component is used only to compliment the proposed in-house training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--*(A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.*
A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The nontechnical description of the job is as follows: "training is offered in domestic and international gas marketing and distribution." The program is for two years and consists of a housing allowance in excess of \$10,000 and a annual salary of \$19,000. As part of the training program, the beneficiary is expected to take three to four college level business courses related to financial analysis applications per semester.

The petitioner states that the training program will include:

1. Introduction of the trainee to the operations, guidelines and policies.
2. Financial analysis applications.
3. Introduction to the petitioner's business operations in the United States.
4. Introduction to the petitioner's international operations.

The training consists of four distinct training components but does not show the number of hours that will be spent in each component, respectively, in academic instruction, observation and practicum. The petitioner has not explained how it will arrange the beneficiary's in-house training and 16 hours per week of college coursework during the overall training program. Further, the petitioner does not describe the type of supervision to be given or show that it has sufficiently trained manpower to provide the training. The petitioner has not shown that it has a structured training program that does not deal in generalities and has a fixed schedule, objectives and means of evaluation.

The petitioner also states that it agrees to remove the 8 hour minimal productive employment proposed in the training program. The petitioner has not stated what other techniques will be used in its place to teach the beneficiary.

Counsel states on appeal that the Service previously approved two relevant precedent cases. However, an unpublished decision has no precedential effect as would a published decision and is not binding on the Service. See 8 C.F.R. 103.3(c). The approvals to which counsel refers to are not precedent cases.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.